



ELEMENT FIVE

COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended, and 29 CFR Part 37 (29 CFR 37.54 (d)(2)(v)) (29 CFR 37.7 – 37.9)

Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of the disability related requirements of WIA Section 188; Section 504 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, including but not limited to 29 CFR 37.7, 37.8, and 37.9 and Subparts B and C of 29 CFR Part 32; the Americans with Disabilities Act and RCW 49.60.

Background

Washington State is committed to making all services, facilities and information accessible and usable by individuals with disabilities. See Attachments 5A-1 – 5A-4. This applies to all programs, activities, and services provided by or made available within the WorkSource Washington System to potential employees, volunteers, contractors/service providers, licensees, clients, and potential clients.

Washington State ensures nondiscrimination on the basis of disability by:

1. Providing opportunities for participation or benefits equal to that afforded to others;
2. Providing financial aid, benefits, services or training equal to that provided to others;
3. Ensuring that qualified individuals with disabilities are offered the option of participating in the same programs or activities offered to non-disabled individuals.
4. Denying assistance, either directly or through contractual licensing or other arrangements, to any agency, organization or person that discriminates on the basis of disability;
5. Ensuring that licensing and/or certification programs operate in a manner which does not discriminate against qualified individuals;
6. Ensuring that eligibility criteria does not screen out individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be



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- necessary for the provision of the aid, benefit, service, training, program, or activity being offered; and
7. Eliminating barriers to employment and providing accommodations in the workplace.

Employment practices are evaluated to include job qualifications for positions, helping to ensure there are no barriers to employment. The State/ESD EO Officer monitors the evaluation processes to ensure compliance. See Element 7.

Washington State is committed to providing reasonable accommodation to qualified individuals with disabilities in all aspects of its programs, employment services and activities, unless providing the accommodation would cause undue hardship. Accommodations may include, but are not limited to, qualified sign language interpreters, readers, auxiliary aids and alternate formats. Reasonable modifications in policies, practices, or procedures are made, when necessary, to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.

Some of the steps taken by ESD and WorkSource Washington to ensure its employment practices, services, programs, and activities are readily accessible by individuals with physical, mental, or sensory disabilities include the following:

- Policy and Procedure Number 0013-1 - ESD Disability Awareness and Reasonable Accommodation, currently under revision, indicates the department's firm commitment to providing timely reasonable accommodations to the known physical, mental or sensory limitations of an otherwise qualified individual with a disability. The accommodations may include any adjustments and modifications which provide a disabled person access to all terms, conditions and privileges of employment, insurance benefits, and employer-supported activities. Qualified sign language interpreters, readers, and other auxiliary aids are provided upon request. (Attachment 5B-4)
- ESD Policy and Procedure Number 1011 - Use of Barrier Free Facilities and Programs for Agency Sponsored Events: Accessibility to programs includes the provision of sign language interpreters and audio taped or materials in Braille. These accommodations are available upon request. Additionally, notices and publicity advertising agency events should indicate the availability of interpreters and taped or materials in Braille upon request. (Attachment 5B-3)



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- WorkSource Washington operates each service, program, or activity so that, when viewed in its entirety, they are readily accessible to and usable by individuals with disabilities. All program services and activities are offered to individuals with disabilities in the most integrated setting appropriate to them. To achieve program and activities accessibility, WorkSource Washington considers the redesigning of equipment, as well as the provision of appropriate auxiliary aids.

The WIA Equal Opportunity and Non-discrimination Policy states that grantees, subrecipients and contractors funded under WIA, whether in whole or in part, are instructed to administer “. . . WIA-funded programs and activities to ensure physical as well as program accessibility to individuals with disabilities, that programs are provided in the most integrated environment appropriate to individuals with disabilities, and that communications with individuals with disabilities are as effective as communications with others. For example, where telephone numbers are given, a TDD number or relay service must also be provided. . . .” (Attachment 2G)

- To ensure program accessibility and technical assistance, Disability Specialists are located in each WorkSource Office. These specialists provide services and technical assistance regarding the needs of individuals with disabilities. (Attachments 5C-1 – 5C-3)
- Attachments 5D-1 – 5D7, Building Skills 2000, are a representative sample of specialized training. A focus of the conference was “Integrating Individuals with Disability into WIA.” See the PowerPoint presentation. (Attachment 5D-2) Participants were also provided with copies of the “Policy Brief” regarding nondiscrimination on the basis of disability. (5D-3)
- See comments regarding WIA Policy Number 4031 - Auxiliary Aids for Effective Communication under “Communication,” Element 5.
- Sample copies of relevant policies from Washington State partners are included in Attachments 5B-7a – 5B-7d.

The DOL Office of Disability Employment Policy's Disability Checklist has been distributed to all WDCs.

Washington State continues in its efforts to assist registrants, applicants, eligible applicants/registrants and participants with disabilities. WorkSource partners have created the WorkSource Disability Network (WDN) steering committee and an extensive



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WorkSource Disability Network plan to ensure universal access to all customers of WorkSource Centers and Affiliate Sites.

The WorkSource Disability Network's (WDN) plan includes:

- Comprehensive disability accessibility assessments — Assessments have been completed for all WorkSource Centers and eleven Affiliates.
- Individual disability access improvement plans — Developed by each center based on the results of their assessment. Model policies and procedures for serving customers with disabilities have been developed and disseminated.
- Removal of access barriers in the existing Information Technology (IT) infrastructure — Over \$300,000 of assistive technology has been purchased and distributed to centers and affiliates along with training and technical support.
- Staff Training — A disability component was incorporated into the customer service training, which is mandatory for all Employment Security staff. Many WorkSource partner staff have taken the training as well. Four two-day training sessions on serving people with disabilities in WorkSource have been presented around the state. Training on issues related to serving people with disabilities has been incorporated into all of the major WorkSource conferences and training events held in the state. Two WorkSource Centers have instituted a practice of holding a one-hour training session for staff each month on a different disability issue or program. The WDN is working to support other Centers in adopting this practice; Trainers in the WorkSource Operations Division have developed a "Disability 101" training session that will be offered to Disability Placement Specialists and to other WorkSource staff.
- Technical Assistance — The Employment Security Department, the Governor's Committee on Disability Issues and Employment (GCDE) and the Division of Vocational Rehabilitation have established a Technical Assistance Clearinghouse. The Clearinghouse serves as a single point of contact on issues related to service to people with disabilities and provides access to information, linkage to useful resources and assistance with creative problem solving.
- Pilot Projects — The Washington Workforce Association (WWA), through a Workforce Incentive Grant (WIG), has funded three local projects designed to test innovative program strategies and create replicable models to improve



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services for customers with disabilities. The results of these projects will be shared throughout the state.

- Benchmarks and performance measures — The WDN has established a work group that has identified issues that negatively impact the collection, consistency, utility and confidentiality of the disability data collected through WorkSource. Recommendations to correct the problems identified have been identified and the workgroup is working to implement those recommendations.

Architectural Accessibility

State entities and partners are required to follow specific compliance requirements for implementation with the Americans with Disabilities Act (ADA). WDCs have been informed of their obligation to abide by federal EO and nondiscrimination provisions, to include ADA. This has been communicated through the Strategic Plan, the self-assessment process for certification of WorkSource Offices and affiliate sites, and in the assurance language in WIA grant agreements. WorkSource Offices that are not state-owned/leased must abide by local building codes and standards for accessibility, as well.

Some of the steps taken by ESD and WorkSource Washington to ensure all programs and activities are architecturally accessible to individuals with disabilities follow:

- ESD Policy and Procedure Number 0013-1 - Reasonable Accommodation and Nondiscrimination on the Basis of Disability, which is being revised, states:
“ . . . The Department shall provide its services, and operate its programs and/or activities so that, when viewed in their entirety, they are accessible to qualified persons of disability. Service and program accessibility includes the requirement that physical structures be accessible to mobility impaired persons. . . .” (Attachment 5B-4)
- The ESD Facilities Unit inspects ESD’s facilities at lease renewal to ensure compliance with requirements of the Americans with Disabilities Act of 1990. A checklist was developed by the State of Washington, with the help of the Governor's Committee on Disability Issues and Employment, members of the disabled community, and client agencies. This checklist meets the requirements for barrier-free access in Washington State, and is more stringent than federal standards. It is used for the evaluation and selection of new and existing facilities. The evaluation focuses on site access, signage at primary building entrances of inaccessible facilities, interior door and corridor



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- widths, public restroom requirements and other architectural specifications of the ADA Accessible Guidelines for compliance with WAC 51-40-005 of the 1992 Washington State Building Code. (Attachment 5E) Copies of the facility evaluations are maintained in the Facilities Unit. In an effort to ensure compliance, the Facilities Unit has also recently instituted a new program addressing signage in all facilities. The checklist and sample evaluations are included in Attachments 5F-1 – 5F-3. Upon request, the Facilities Unit provides assistance to the partners.
- The WDCs were given criteria to follow to become certified as a WorkSource Center. Each WDC provided this information in the way that worked best for it. One good example to note is that of the Pacific Mountain WDC's facilities review. The Pacific Mountain WDC chose to have a well-known external expert who works with disabilities issues for clients to conduct its review (Payne & Associates, Inc.). (Attachment 5G)

Communication

WorkSource Washington partners take appropriate steps to ensure that communications with applicants, clients, and members of the public with disabilities are as effective as communications with others. Auxiliary aids and/or services are provided, when appropriate and necessary, to afford individuals with disabilities opportunities to participate in and enjoy the benefits of WIA-Title I-financially assisted programs or activities. TDD or equally effective telecommunications systems to communicate with individuals with impaired hearing or speech are available when needed.

The WDCs have been informed of their obligation to ensure that communications with members of the public, clients, and applicants with disabilities are as effective as communications with others. The WIA Equal Opportunity and Non-discrimination Policy states that grantees, subrecipients and contracts funded under WIA, whether in whole or in part, must ensure that “. . . programs are provided in the most integrated environment appropriate to individuals with disabilities, and that communications with individuals with disabilities are as effective as communications with others. For example, where telephone numbers are given, a TDD number or relay service number must also be provided. . . .” (Attachment 2G)

WIA Policy Number 4031, Auxiliary Aids for Effective Communication, states, under “Local Service Delivery Site Responsibilities,” . . . Management and staff at all local service delivery sites ensure that Persons with Disabilities, including individuals who are deaf, deaf-blind, and/or hard-of-hearing, blind or visually impaired, are given equal access to all services and programs . . . This is accomplished by: (1.) Identifying and advising Persons with Disabilities of the availability of auxiliary aid services that can be



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arranged, and (2.) **Upon request**, arranging for and providing for auxiliary aid services **at no cost to the customer**. . . ." (Attachment 5C-3)

Additionally, ESD Policy and Procedure Number 0013-1, Reasonable Accommodation and Nondiscrimination on the Basis of Disability, states ". . . The Department is committed to ensuring that all aspects of its employment practices, services, programs, and activities, when viewed in their entirety, are readily accessible by individuals with physical, mental, or sensory disabilities. . . . Where required, qualified sign language interpreters, readers, and other auxiliary aids will be provided. Documents and publications will also be made available in alternate formats. . . ." (Attachment 5B-4)

Records

ESD and the WDCs ensure the confidentiality of information related to an individual's medical condition as noted in 29 CFR Part 32, Subpart B and the Americans with Disabilities Act. Medical condition information is kept in a secured location separate and apart from other files. Electronic systems also support separate recordkeeping for medical condition information. Pre-employment/employment medical inquiries are conducted in accordance with WIA, ADA and Section 504 regulations. Specific guidance is referenced in the recipients' policies and resource sharing and grant agreements. EO monitoring includes adherence to these provisions. See Elements 2, 6 and 7.

ESD's Policy and Procedure Number 0013-1, Reasonable Accommodation and Nondiscrimination on the Basis of Disability, states ". . . Upon completion of the reasonable accommodation process, all supporting information needs to be forwarded to the ADA Coordinator or other HRM Branch designee. There it will be filed in a secure place, separate from an employee's personnel file. . . ." (Attachment 5B-4)



Element Five Definitions

A **uxiliary aids or services** includes - (1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments; (2) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments; (3) Acquisition or modification of equipment or devices; and (4) Other similar services and actions.

D **isability** means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment: Or a physical, mental or sensory impairment that is abnormal, and medically cognizable.

E **mployment practices** means a recipient's practices related to employment, including but not limited to: (1) Recruitment or recruitment advertising; (2) Selection, placement, layoff or termination of employees; (3) Upgrading, promotion, demotion or transfer of employees; (4) Training, including employment-related training; (5) Participation in upward mobility programs; (6) Deciding rates of pay or other forms of compensation; (7) Use of facilities; or (8) Deciding other terms, conditions, benefits and/or privileges of employment. Employment-related training means training that allows or enables an individual to obtain employment.

F **acility** means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located. The phrase "real or personal property" in the preceding sentence includes indoor constructs that may or may not be permanently attached to a building or structure. Such constructs include, but are not limited to, office cubicles, computer kiosks, and similar constructs.

F **undamental alteration** means: (1) A change in the essential nature of a program or activity as defined in this part, including but not limited to an aid, service, benefit, or training; or (2) A cost that a recipient can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in such a burden include: (a) The nature and net cost of the modification needed, taking into consideration the availability of tax credits and



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deductions, and/or outside financial assistance, for the modification; (b) The overall financial resources of the facility or facilities involved in the provision of the modification, including: (i) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and (ii) The effect the modification would have on the expenses and resources of the facility or facilities; (c) The overall financial resources of the recipient, including: (i) The overall size of the recipient; (ii) The number of persons aided, benefited, served, trained, or employed by the recipient; and (iii) The number, type and location of the recipient's facilities; (d) The type of operation or operations of the recipient, including: (i) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and (ii) Where the modification sought is employment-related, the composition, structure and functions of the recipient's workforce; and (e) The impact of the modification upon the operation of the facility or facilities, including: (i) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and (ii) The impact on the facility's ability to carry out its mission.

Qualified individual with a disability means: (1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question; (2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals with limited English skills. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary.

Reasonable accommodation - (1) The term "reasonable accommodation" means: (i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or (ii) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to: (A) The environment where work is performed or aid, benefits, services, or training are given; or (B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or (iii) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities. (2) Reasonable accommodation includes, but is not limited to: (i) Making existing facilities used by applicants, registrants, eligible applicants/registrants,



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participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and (ii) Restructuring of a job or a service, or of the way in which aid, benefits, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities. (3) To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Undue hardship means, with regard to reasonable accommodation of individuals with disabilities, significant difficulty or expense incurred by a recipient, when considered in light of the factors set forth in paragraph (ii). (ii) Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include: (A) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation; (B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including: (1) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and (2) The effect the accommodation would have on the expenses and resources of the facility or facilities; (C) The overall financial resources of the recipient, including: (1) The overall size of the recipient, [Page 61722] (2) The number of persons aided, benefited, served, trained, or employed by the recipient, and (3) The number, type and location of the recipient's facilities; (D) The type of operation or operations of the recipient, including: (1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient, and (2) Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and (E) The impact of the accommodation upon the operation of the facility or facilities, including: (1) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and (2) The impact on the facility's ability to carry out its mission.



Documentation

Attachments for Element Five

- 5A 1-RCW 50.12.210 Employment Services for Handicapped – WAC 162
 - 2-Title 162 WAC Human Rights Commission
 - 3-Disability Access Information on the Web Site
 - 4-Executive Order No. 96-04 Implementing the Americans with Disabilities Act and Superseding 93-03

- 5B 1-Workforce Diversity Program - Affirmative Action Planning Guidance
 - 2-Identifying Essential Job Functions
 - 3-Policy and Procedure Number 1011 - Use of Barrier Free Facilities and Programs for Agency Sponsored Events
 - 4-Policy and Procedure Number 0013-1 - Reasonable Accommodation and Nondiscrimination on the Basis of Disability
 - 5-Disability Placement Services Design Document
 - 6-Testing Services for Persons with Disabilities
 - 7-Partner Policies: Department of Social and Health Services (Division of Access and Equal Opportunity)
 - a-Reasonable Accommodation of Persons with a Disability (#582)
 - b-Communication Access for Persons Who Are Deaf and Hard of Hearing (#720)
 - c-Accessible Meetings
 - d-Application for DVR Services

- 5C 1-Disability Placement Services
 - 2-List: Local Disability Placement Specialists
 - 3-Auxiliary Aids for Effective Communication

- 5D 1-Building Skills 2000 Overview
 - 2-PowerPoint Presentation
 - 3-Policy Brief
 - 4-Federal Regulation 29 CFR Part 37
 - 5-Ability You Can Bank On
 - 6-Protocol for Serving Customers with Disabilities
 - 7-Vocational Rehabilitation Web Site

- 5E WAC 51-40-005 Uniform Building Code Requirements



Documentation

Attachments for Element Five - Continued

- 5F 1-Barrier-Free Access/A Checklist for State Leased Facilities
- 2-ADA Checklist Evaluation Report/Aberdeen Career Development Center
(Sample of Office Checklist)
- 3-ADA Checklist Evaluation Report/Goldendale (Sample of Office Checklist)
- 5G Certification Criteria for Pacific Mountain Workforce Development Area II